

REMARKS

I. CLAIM STATUS

Claims 49-97 are pending. Claims 49, 73, 74, 94, and 95 are amended herein to correct typographical errors. Thus, no new matter is added.

II. CLAIM OBJECTIONS

The Examiner objects to claims 49, 74, and 94 because they incorrectly spelled the terms “plasticizer” and “strand.” Applicants have amended these claims in order to correct these misspellings. Thus, Applicants respectfully request that the Examiner withdraw this objection.

In addition, Applicants note that they have amended claim 73 to correct another misspelling of “plasticizer” and claim 95 to correct the misspelling of “polymer.”

III. DOUBLE PATENTING REJECTION

The Examiner rejects pending claims 49-84, 88, 89, and 95-97 under the judicially-created doctrine of obviousness-type double patenting over claims 1-30 of U.S. Patent No. 7,155,094 to Donetti et al. (“Donetti”) in view of U.S. Patent No. 6,103,823 to Centofanti et al. (“Centofanti”) and U.S. Patent No. 5,462,981 to Bastioli et al. (“Bastioli”). See Jan. 27, 2009, Office Action at 3-5.

While Applicants respectfully disagree, Applicants request that the rejection be held in abeyance until the claims have been held to be otherwise allowable.

IV. REJECTIONS UNDER 35 U.S.C. § 103(a)

A. The Examiner rejects claims 49-85, 88, 89, and 95-97 under 35 U.S.C. § 103(a) as being allegedly unpatentable over Donetti in view of Centofanti and Bastioli. See Jan. 27, 2009, Office Action at 6-9.

Applicants' application is a national phase application based on PCT/EP2003/011995, filed October 29, 2003. Donetti issued December 26, 2006, and is a national phase application based on PCT/EP02/14773, filed December 27, 2002. Therefore, Donetti appears only to be available as § 102(e) prior art.

While Donetti qualifies as § 102(e) prior art, it is not available as prior art for an obviousness rejection against the current application, pursuant to 35 U.S.C. § 103(c). 35 U.S.C. § 103(c) states that subject matter that qualifies as prior art only under 35 U.S.C. §§ 102(e), (f), and/or (g) is disqualified as prior art against the claimed invention if that "subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person." Common ownership may be established by a conspicuous statement indicating that the claimed invention and a § 102(e) reference were, at the time the invention was made, commonly owned or subject to an obligation of assignment to the same person. See M.P.E.P. § 706.02(I)(2)(II).

STATEMENT REGARDING OBLIGATION OF ASSIGNMENT

Donetti is disqualified as prior art under 35 U.S.C. § 103(c), because the present invention and Donetti were, at the time the invention was made, subject to an obligation of assignment to the same person, *i.e.*, Prysmian Cavi E Sistemi Energia S.r.L., as evidenced by the assignment information recorded for Donetti on August 28, 2006, at

Reel 018171, Frame 0452,¹ and the assignment information recorded for the instant application on March 1, 2007, at Reel 018999, Frame 0943. *See* M.P.E.P.

§ 706.02(I)(2)(II). Accordingly, Applicants respectfully submit that the Examiner cannot rely upon it to support the pending § 103 rejection.

Therefore, because Donetti does not qualify as legally valid prior art against the present application under 35 U.S.C. § 103(a), Applicants respectfully submit that the rejection is improper and should be withdrawn.

B. The Examiner rejects claims 86, 87, and 90 under 35 U.S.C. § 103(a) as being allegedly unpatentable over Donetti, Centofanti, and Bastioli in view of U.S. Patent No. 5,051,222 to Marten et al. ("Marten"). *See* Jan. 27, 2009, Office Action at 10.

As discussed above, Donetti is not available as prior art for an obviousness rejection against the current application, pursuant to 35 U.S.C. § 103(c). Applicants respectfully submit that the remaining references relied upon by the Examiner fail to teach or suggest the claimed invention. Thus, Applicants respectfully submit that the rejection should be withdrawn.

C. The Examiner rejects claims 91-94 under 35 U.S.C. § 103(a) as being allegedly unpatentable over Donetti, Centofanti, and Bastioli in view of U.S. Patent No. 6,426,026 to Avgousti et al. ("Avgousti"). *See* Jan. 27, 2009, Office Action at 11-12.

¹ Donetti was originally assigned to Pirelli & C S.p.A. as evidenced by the assignment information recorded on March 27, 2006, at Reel 017723, Frame 0731. Through a series of subsequent assignments/name changes, Donetti is now assigned to Prysmian Cavi E Sistemi Energia S.r.L.

As discussed above, Donetti is not available as prior art for an obviousness rejection against the current application, pursuant to 35 U.S.C. § 103(c). Applicants respectfully submit that the remaining references relied upon by the Examiner fail to teach or suggest the claimed invention. Thus, Applicants respectfully submit that the rejection should be withdrawn.

V. OTHER CITED REFERENCE

The Examiner states that “[t]he prior art made of record and not relied upon is considered pertinent to applicant’s disclosure. US 2005/0175834 discloses a water-resistant telecommunication cable.” Jan. 27, 2009, Office Action at 12. Applicants note for the record that they do not necessarily ascribe to the Examiner’s characterization of the other prior art.

Conclusion

In view of the foregoing amendments and remarks, Applicants respectfully request reconsideration of this application and the timely allowance of the pending claims.

If the Examiner believes a telephone conference could be useful in resolving any of the outstanding issues, he is respectfully invited to contact Applicants’ undersigned counsel at 202-408-4152.

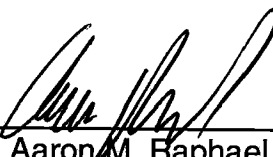
Please grant any extensions of time required to enter this response and charge any additional required fees to our Deposit Account No. 06-0916.

Respectfully submitted,

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GARRETT & DUNNER, L.L.P.

Dated: April 9, 2009

By: _____


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